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July 16, 2024

BY ECF

Hon. Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: United States v. Andrew Badolato
20 Cr 412 (AT)

Dear Judge Torres:

This letter is submitted on behalf of defendant Andrew Badolato in support of his motion for a reduction in sentence pursuant to 18 U.S.C. Section 3582(c)(2).

As Your is no doubt well aware, under Amendment 821 to the United States Sentencing Guidelines - which took retroactive effect on November 1, 2023 - the United States Sentencing Commission created an "Adjustment for Certain Zero-Point Offenders," now operative at Guideline Section 4C1.1. Under the new Zero-Point Offender Guideline, if Mr. Badolato satisfies the enumerated criteria - as he clearly does here - he is eligible for a two-level reduction in his total offense level and a sentence reduction.

In determining whether, and to what extent, a reduction in Mr. Badolato's term of imprisonment is warranted, the Court is required to determine the amended guideline range that would have been applicable if the Zero-Point Offender Guideline had been in effect at the time that Mr. Badolato was sentenced by Your Honor on April 26, 2023. See Guideline Section 1B1.10(b)(1).

At the time of Mr. Badolato's sentencing on April 26, 2023, his total offense level was determined by the Court to be a level 22. Mr. Badolato had no criminal convictions and was in Criminal History Category I. This placed Mr. Badolato within the 41-51 month prison range under the advisory Guidelines. See Sentencing Transcript (ECF Doc 389) at page 5. Mr. Badolato was ultimately sentenced by Your Honor to a below-Guidelines sentence of 36 months imprisonment in the case.¹ In reviewing the transcript of Mr. Badolato's sentencing before Your Honor it appears that the Court based this decision on a number of factors, including:

his age (58 years old);

that this was his first conviction;

that he suffered from several medical conditions, including a recent stroke which resulted in cognitive difficulties;

that he maintained a close relationships with his family, including moving in with his parents who are in their late 70's, to assist them in performing basic household tasks and watching over them;

¹ In reaching this determination, the Court concluded "for all of the reasons stated....that a sentence below the guidelines range is appropriate for Mr. Badolato. Accordingly, I do believe a variance pursuant to 18 United States Code, Section 3553(a) is warranted for Mr. Badolato." Id. at page 52-53.

that the government stated that he provided “timely and accurate information about the offense conduct”; and

finally, that “the Court consider[ed] that Mr. Badolato had a lesser role in the fraud compared to the other defendants. He did not misappropriate the stolen funds for his personal use, and did not participate in creating the false backdated documents to conceal the wrongdoing.”

See Transcript of Sentencing (ECF Doc 389) at pages 49-50. As Your Honor explained in imposing Mr. Badolato’s below-Guidelines sentence:

If there is ever a day in a person’s life when he’s entitled to be judged on the basis of the entirety of his background and contributions is sentencing. And Section 3553(a) in directing the Court to consider the history and characteristics of the offender is consistent with that.

Id. at page 50.

With the additional 2-level zero-point offender reduction - Mr. Badolato’s total offense level is now a level 20 and his amended Guideline prison range is 33-41 months instead of 41-51 months. While I believe that a below-Guideline sentence would continue to be warranted in Mr. Badolato’s particular case, I am aware that the law prohibits the Court from reducing his term of imprisonment in connection with this motion to a term that is less than the minimum of the applicable amended Guideline range of 33 months.² See Guideline Section 1B1.10(b)(2)(A). I am, therefore, most respectfully asking Your Honor to reduce Mr. Badolato’s term of imprisonment from 36 months to 33 months - the low end of his amended applicable Guidelines prison range.

² Notably, at the time of his original sentencing before Your Honor - with an applicable Guidelines prison range of 41-51, rather than 33-41 months - the Probation Department recommended a sentence of 30 months for Mr. Badolato.

Significantly, Mr. Badolato - who will be 60 years old in August - has been a model inmate since surrendering for the commencement of the sentence previously imposed by this Court. I have attached hereto for Your Honor's review, a copy of the Mr. Badolato's Bureau of Prisons **Summary Reentry Plan - Progress Report**. According to the Report, Mr. Badolato has incurred no disciplinary infractions, has received good work reports from his detail supervisors, has had a good report with staff and fellow inmates alike, and is not viewed as a management concern. Mr. Badolato has also sought to improve himself by, among other things, completing and receiving his GED or High School Diploma while in prison.

For all of the foregoing reasons, I am asking Your Honor to reduce Andrew Badolato's term of imprisonment from 36 months to 33 months - the low end of his amended Guideline prison range now.

Respectfully submitted

/JRF/

James R. Froccaro, Jr.

JRF:pa
Encl.



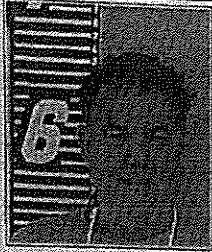
Summary Reentry Plan - Progress Report

SEQUENCE: 00450609

Report Date: 05-14-2024

Dept. of Justice / Federal Bureau of Prisons

Transfer Report Report for inmate: BADOLATO, ANDREW 73773-018



Facility: EDG EDGEFIELD FCI
 Name: BADOLATO, ANDREW
 Register No.: 73773-018
 Quarters: D05-204U
 Age: 59
 Date of Birth: 08-18-1964

Custody Level: OUT
 Security Level: MINIMUM
 Proj. Rel Date: 10-29-2025
 Release Method: FIRST STEP
 DNA Status: BUF04852 / 07-25-2023

Contact Information

Release contact & address

Patricia Badolato, MOTHER
 2704 Foxtrail Court, Cocoa, FL 32906 US
 Phone (Home) : 321-208-7455

Offenses and Sentences Imposed

Charge	Terms In Effect
18:1343 CONSPIRACY TO COMMIT WIRE FRAUD	36 MONTHS

Date Sentence Computation Began: 07-25-2023

Sentencing District: NEW YORK, SOUTHERN DISTRICT

Days FSGT / WSGT / DGCT	Days GCT or EGT / SGT	Time Served	+ Jail Credit - InOp Time
0 / 0 / 0	0	Years: 0 Months: 9 Days: 27	+1 JC -0 InOp

Detainers

Detaining Agency	Remarks
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NO DETAINER

Program Plans

Inmate Badolato arrived at SCP Edgefield on November 9, 2023, as a Lesser Security/Residential Drug Abuse Treatment (RDAP) program transfer from LSCI Butner. He is currently serving a 36-month sentence for Conspiracy to Commit Wire Fraud. He has the projected release date of October 29, 2025 via First Step Act release. He is being reviewed for direct home confinement and/or halfway house placement.

Current FSA Assignments

Assignment	Description	Start
FTC ELIG	FTC-ELIGIBLE - REVIEWED	08-05-2023
N-ANGER N	NEED - ANGER/HOSTILITY NO	03-31-2024
N-ANTISO N	NEED - ANTISOCIAL PEERS NO	03-31-2024
N-COGNTV N	NEED - COGNITIONS NO	03-31-2024
N-DYSLEX N	NEED - DYSLEXIA NO	08-01-2023
N-EDUC N	NEED - EDUCATION NO	03-31-2024
N-FIN PV Y	NEED - FINANCE/POVERTY YES	03-31-2024
N-FM/PAR N	NEED - FAMILY/PARENTING NO	03-31-2024
N-M HLTH N	NEED - MENTAL HEALTH NO	03-31-2024
N-MEDICL Y	NEED - MEDICAL YES	03-31-2024
N-RLF Y	NEED - REC/LEISURE/FITNESS YES	03-31-2024
N-SUB AB Y	NEED - SUBSTANCE ABUSE YES	03-31-2024
N-TRAUMA Y	NEED - TRAUMA YES	03-31-2024
N-WORK N	NEED - WORK NO	03-31-2024
PREF HOUSE	EBRR INCENTIVE PREFER HOUSING	11-24-2023
R-MIN	MINIMUM RISK RECIDIVISM LEVEL	03-31-2024

FSA Comments

Inmate Badolato is a MINIMUM risk of recidivism and eligible to obtain First Step Act time credits. He has been encouraged to enroll in and complete programming that directly correlates with his "NEEDS" Assessment. He has completed the Problem Solving and Anger Management adult continuing education programs that meet his need in the TRAUMA category.

Current Work Assignments

Archived as of 05-20-2024

Summary Reentry Plan - Progress Report

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Summary Reentry Plan - Progress Report

SEQUENCE: 00450609

Dept. of Justice / Federal Bureau of Prisons

Report Date: 05-14-2024

Transfer Report Report for inmate: BADOLATO, ANDREW 73773-018

Fac	Assignment	Description	Start
EDG	C SAFETY	CAMP SAFETY WORKERS	04-16-2024

Work Assignment Summary

Inmate Badolato completed the admission and orientation program shortly after arriving at SCP Edgefield. He was able to obtain a paying work assignment on the Safety work detail. He has received good work reports from his detail supervisors. While housed at LSCI Buñner, he held a work assignment in the Food Service work detail. He has not enrolled in or completed any vocational programming during his time incarcerated.

Current Education Information

Fac	Assignment	Description	Start
EDG	ESL HAS	ENGLISH PROFICIENT	08-09-2023
EDG	GED HAS	COMPLETED GED OR HS DIPLOMA	08-09-2023

Education Courses

SubFac	Action	Description	Start	Stop
EDG SCP	C	CORRESPONDENCE ANGER MANAGE	03-29-2024	05-10-2024
EDG SCP	C	CORRESPONDENCE PROBLEM SOLVE	12-06-2023	01-19-2024
EDG SCP	C	RPP1 - AIDS AWARENESS	11-21-2023	11-21-2023
BUF	C	MIND SET	09-14-2023	10-11-2023

Education Information Summary

Inmate Badolato's educational history has been verified by the Education Department. As stated above, he has completed the Problem Solving and Anger Management adult continuing education programs. At his previous institution he completed the Mind Set program. He has not enrolled in any vocational programming. He decline to participate in the RDAP program, as he is not eligible to receive the time-off award for completion of the program and he does not have time to complete the program. He is on the waitlist to participate in the Non-Residential Drug Abuse program, however, it has not been offered since his arrival at SCP Edgefield.

Discipline Reports

Hearing Date	Prohibited Acts
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** NO INCIDENT REPORTS FOUND IN LAST 6 MONTHS **

Discipline Summary

Inmate Badolato has not been incarcerated long enough at SCP Edgefield to determine his personal character and responsibility. Since arriving at SCP Edgefield, he has obtained and maintained good weekly cell sanitation reports, actively participated in programming, maintained good weekly cell sanitation reports, and has remained incident report free. He has good rapport with staff and fellow inmates alike. He is not viewed as a management concern at this time.

ARS Assignments

Fac	Assignment	Reason	Start	Stop
EDG SCP	A-DES	OTHER AUTH ABSENCE RETURN	04-16-2024	CURRENT
EDG SCP	A-DES	TRANSFER RECEIVED	11-09-2023	04-16-2024
BUF	A-DES	US DISTRICT COURT COMMITMENT	07-25-2023	11-02-2023

Current Care Assignments

Assignment	Description	Start
CARE1 MH	CARE1-MENTAL HEALTH	08-01-2023
CARE2	STABLE, CHRONIC CARE	07-31-2023

Current Medical Duty Status Assignments

Assignment	Description	Start
NO PAPER	NO PAPER MEDICAL RECORD	08-07-2023
REG DUTY	NO MEDICAL RESTR-REGULAR DUTY	07-31-2023
SOFT SHOES	SOFT SHOES ONLY	08-30-2023
YES F/S	CLEARED FOR FOOD SERVICE	08-07-2023

Current PTP Assignments

Assignment	Description	Start
RSW WAIT	RESOLVE WORKSHOP WAITING	08-23-2023

Current Drug Assignments



Summary Reentry Plan - Progress Report

SEQUENCE: 00450609

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Dept. of Justice / Federal Bureau of Prisons

Transfer Report Report for inmate: BADOLATO, ANDREW 73773-018

Assignment	Description	Start
DAP DECL	RESIDENT DRUG TRMT DECLINED	02-08-2024
ED WAIT RJ	DRUG EDUCATION WAIT-RQ JUDREC	02-08-2024
INELIGIBLE	18 USC 3621 RELEASE INELIGIBLE	02-08-2024
NR WAIT	NRES DRUG TMT WAITING	08-16-2023

Physical and Mental Health Summary

Inmate Badolato has no medical restrictions. He has been cleared for regular duty and for work in the food service work detail. He does require the use of soft shoes. He has the mental health assignment of Care Level One and the medical assignment of Care Level Two (Stable Chronic Care). There are no known medical or mental health issues that would prevent him in participating in direct home confinement or halfway house placement.

FRP Payment Plan

Most Recent Payment Plan

FRP Assignment: PART FINANC RESP-PARTICIPATES Start: 08-07-2023

Inmate Decision: AGREED \$30.00 Frequency: MONTHLY

Payments past 6 months: \$120.00 Obligation Balance: \$1,414,323.00

Financial Obligations

No.	Type	Amount	Balance	Payable	Status
1	ASSMT	\$100.00	\$0.00	IMMEDIATE	COMPLETEDZ
Adjustments:					
		Date Added	Fac	Adjust Type	Reason Amount
		04-18-2024	EDG	PAYMENT	INSIDE PMT \$15.00
		02-13-2024	EDG	PAYMENT	INSIDE PMT \$30.00
		01-10-2024	EDG	PAYMENT	INSIDE PMT \$30.00
2	REST NV	\$1,414,368.00	\$1,414,323.00	IMMEDIATE	AGREED
Adjustments:					
		Date Added	Fac	Adjust Type	Reason Amount
		05-11-2024	EDG	PAYMENT	INSIDE PMT \$30.00
		04-18-2024	EDG	PAYMENT	INSIDE PMT \$15.00

Financial Responsibility Summary

Inmate Badolato was court ordered to pay a \$100.00 felony assessment fee and restitution in the amount of \$1,414,368.00. He has agreed to and signed an Inmate Financial Responsibility Program Contract and has been making scheduled payments toward the obligation. He has only missed one of the scheduled payments to date. He is aware that he will need to make payments toward any unpaid balance upon his release from custody. He has been encouraged to maintain the paying work assignment and to begin saving funds for release purposes.

Release Planning

Inmate Badolato was sentenced in the Southern District of New York to a 36-month sentence for Conspiracy to Commit Wire Fraud. He has the projected release date of October 29, 2025, via First Step Act release. He is being reviewed for direct home confinement and/or halfway house placement. He plans on residing with his mother in the Cocoa, Florida area upon his release from custody.

General Comments

Inmate Badolato has been reviewed per the First Step Act and the Second Chance Act (Five Factor Review). He will be referred for direct home confinement and/or 270-days or more of halfway house placement.



Summary Reentry Plan - Progress Report

SEQUENCE: 00450609

Dept. of Justice / Federal Bureau of Prisons
Transfer Report Report for inmate: BADOLATO, ANDREW 73773-018

Report Date: 05-14-2024

Name: BADOLATO, ANDREW
Register Num: 73773-018
Age: 59
Date of Birth: 08-18-1964
DNA Status: BUF04852 / 07-25-2023

Inmate (BADOLATO, ANDREW, Register Num: 73773-018)

5/19/24

Date

Chairperson

5/14/24

Date

Case Manager

5/19/24

Date